

BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

IN THE MATTER OF ENFORCEMENT	)	PDC CASE NO: 99-075
ACTION AGAINST	)	
	)	
Janet Barry, Superintendent,	)	Amended Notice of Administrative
Issaquah School District No. 411	)	Charges
	)	
Respondent.	)	
IT IS ALLEGED as follows:		

**I.**  
**JURISDICTION**

Jurisdiction of this proceeding is based on Chapter 42.17 RCW, the Public Disclosure Commission, Chapter 34.05, Administrative Procedure Act, and Title 390 WAC.

**II.**  
**LAW**

RCW 42.17.130 states in part: "No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly,...for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency and clientele lists of persons served by the office or agency... PROVIDED, that the foregoing provisions of this section shall not apply to the following activities: .... (3) Activities which are part of the normal and regular conduct of the office or agency."

WAC 390-05-271 states the general applications of RCW 42.17.130 as follows: “ ... (2) RCW 42.17.130 does not prevent a public office or agency from ... (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.”

WAC 390-05-273 states the following: “Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.”

### **III.** **BACKGROUND**

On March 8, 1999, Bill Elder filed a complaint with the Public Disclosure Commission alleging that officials of the Issaquah School District had violated RCW 42.17.130 by its actions in relation to a ballot proposition that was scheduled for April 27, 1999. Mr. Elder alleged that the Issaquah School District, acting under the direction of Superintendent Janet Barry and the elected board of school directors, was writing, printing, and distributing unfairly biased materials at public expense in an effort to influence the outcome of the April 27, 1999 \$68.7 million capital construction bond and \$7.9 million technology levy.

The April 27, 1999 election was the third bond or levy election that the Issaquah School District had placed on the ballot since 1998. On February 3, 1998, a \$61.7 million four-year maintenance and operations levy was approved by voters while a \$53.3 million school bond, a \$9.5 million

technology levy, and a \$1 million transportation levy were rejected. On May 19, 1998, the \$1 million transportation levy was approved while a reduced \$31.2 million 20-year capital construction bond and an \$8.9 million technology levy were rejected by voters. Finally, on April 27, 1999, voters approved a \$68.7 million capital construction bond and a \$7.9 million technology levy.

#### **IV.** **FACTS**

These charges incorporate the Report of Investigation and all exhibits by reference. As early as 1994, officials of the Issaquah School District began discussing the possibility of year-round schools as an alternative to the construction of new schools. The possibility of year round schools was considered one of the most crucial issues facing the District. Following passage of the district's 1994 capital construction bond ballot proposition, a Feasibility Committee agreed to track the progress of the district's remodel and construction activities and investigate the issue of year-round education. Demographic data indicated that even with new school construction, student population would exceed total district capacity within five years. The Feasibility Committee presented its findings to the Issaquah School District Board of Directors on May 24, 1995. A portion of the report stated that data from year-round schools research has indicated improvement in student learning, higher staff morale, and increased community involvement after implementation of year-round education.

Plans were made for a Year-Round Education Committee to work during the 1995-1996 school year to define and prepare a comprehensive district wide implementation plan for year-round education. Some of the many issues that the plan called for addressing included single and multi-track scenarios, a long term communication and transportation plan, school calendar, community education and involvement, staff input, union and contract administration, maintenance of facilities, and financial issues. The plan called for informing the school board if the committee found value in early implementation of a portion of the plan.

**Year-Round Education** – In year-round education, students attend the required 180 days of school each year. However, their attendance and vacations are spread more evenly throughout the calendar year, and are not confined to nine months of school between September and May followed by three months of summer vacation. Year-round education may or may not involve a multi-track system.

**Multi-Track Education** – In multi-track education, students also attend the required 180 days of school each year. However, students are assigned to one of several tracks. They attend school and take vacations following the schedule assigned to that track. Some tracks are on vacation while other tracks are in school. For example, a multi-track schedule might call for students to attend school for 60 days followed by 15 days of vacation, repeated until each track has completed 180 days of school.

**Alternate Futures Committee** - In 1997, the Issaquah school board created the Alternate Futures Committee to assist the board in planning for both the short and long term projected growth in student population. On November 5, 1997, the district held an “Informational Community Meeting” regarding Multi-Track Year-Round Schools. The meeting included a variety of speakers and sought community input on the subject. Pro and con positions were heard. The Alternate Futures Committee reviewed a number of options for housing students, including multi-track year-round schools, double shifting, leasing space, shifting boundaries and boundary revisions, reconfiguration of grade spans, and extended days. The Alternate Futures Committee reviewed and presented information about each alternative to the Issaquah school board at regularly scheduled board meetings held between August and December, 1998. These meetings were held after two previous capital construction bond proposals were rejected by voters in February and May of 1998. The information was also shared with education groups and other stakeholders such as members of the PTA, the Issaquah Education Association, community

organizations, parents, teachers, and administrators. Information heard by the school board on ways to deal with increased student populations included the following:

Year-Round Education – The Board heard the pros and cons, advantages and disadvantages of year-round education from other school districts around the country that had experienced significant student population increases. Information provided by the National Association for Year-Round Education included a history, description, terminology, configurations and calendars of year-round education, as well as its advantages and disadvantages regarding instructional benefits, student considerations, community and family, academic achievement, personnel considerations, school organization and curriculum, economics, and other accommodations.

Double-Shifting – The school board heard how double-shifting can serve two student populations in a single facility. The board learned that double-shifting has a minimal impact on the budget, although start-up costs may be significant and capital budget funds cannot be used for that particular purpose. The board learned that operating costs of the second shift may be similar to the first shift, but transportation costs will increase. They also heard about additional safety concerns for K-12 students, no community access until late evening or weekends, staff contractual needs, and the wear and tear on the buildings.

Leasing Space – The school board learned that leasing space could only be a temporary solution. Building availability was found to be limited and there were concerns about the cost to transform existing buildings into school sites.

Shifting Boundaries/Boundary Revision – It was found that boundary revisions could be used as a supplement to other solutions but was not a total solution to the expected increase in student growth.

Reconfiguration of Grade Spans – The school board learned that grades could be reconfigured from K-5, 6-8, and 9-12 to K-6, 7-9, and 10-12, resulting in increased populations at some

already overcrowded elementary schools, but allowing the high schools to operate under capacity. The cost of a new high school was estimated at \$70 million. It was determined that reconfiguration plans could be effective after 2003 when student populations are expected to level off.

Extended Day – The school board heard two examples where an extended high school day had been implemented. The board learned that the North Thurston School District used this concept for two years and then went to a night school program. Eventually, a new high school was built. The board heard how the Pasco School District used an extended day to serve 2,500 high school students. The second shift provided the core curriculum with a limited elective program. The costs were similar to the regular day schedule with no bus service provided for the second shift.

After reviewing the presentations of the Alternate Futures Committee between August and December of 1998, the Issaquah School Board of Directors voted unanimously at their December 1998, regularly scheduled school board meeting to place a \$68.7 million capital construction bond and a \$7.9 million technology levy on the April 27, 1999 ballot.

**Surveys and Polls** – After the February 3, 1998 rejection of the district's \$53.3 million capital construction bond proposal, \$9.5 million technology levy, and \$1 million transportation levy, the district contracted with Voice Poll to conduct a telephone survey. The district sent out a news release inviting residents to participate in an "open invitation survey". The news release said the board would use the results of the survey, along with the results of a random sample survey, to help decide what items to place on an upcoming school ballot. The telephone survey, in part, asked questions about overcrowding in elementary schools, support for building new schools, concern about extensive use of portables, the level of concern if there would be a tax increase of \$88 a year over current levels, and questions about technology and transportation issues.

Seattle Northwest Securities, a bond underwriting firm, contracted on behalf of the Issaquah School District with Eiland Research to conduct a survey for the district in late March to early May, 1998, prior to the May 19, 1998 ballot proposition. Eiland Research is a public opinion and market research firm. The survey included questions about some of the same issues as the Voice Poll telephone survey concerning overcrowding, support for new construction, and the level of concern over a tax increase.

In November, 1998, after defeat of the May 19, 1998 capital construction bond, the district hired Evans McDonough Company to conduct a survey of randomly selected registered voters in the Issaquah School District. The district targeted registered voters for the 100-question survey. The survey asked questions about favorable and unfavorable ratings of school board members, city council members, other local officials and three newspaper companies. It also asked about the performance of the district, and about funding issues, taxes, building new schools, and reformatting the district, technology issues, overcrowding, and use of portables. The survey also asked whether the participant was an absentee voter, asked about precinct information, voter registration date, and whether they had voted in previous elections going back to 1996.

**Consultants** – On December 1, 1998, KNCB/Dave, a public relations and media relations marketing and advertising firm, was selected by the Issaquah School District to create and implement a long-term communications plan. The budget submitted by KNCB/Dave was for \$22,000 not including the costs of printing, mailings, and advertising. Working on behalf of the District for KNCB/Dave was Denise Passinetti, its Vice-President of Public Relations. Ms. Passinetti was the Communications Director for the Issaquah School District from 1993 to 1996. The district and Ms. Passinetti decided to postpone work on the long term communications plan until May, 1999. Instead, Ms. Passinetti concentrated on getting information out to the public on the upcoming April 27, 1999 ballot propositions. KNCB/Dave was also hired by Volunteers for

Issaquah School, the citizens political committee supporting the April 27, 1999 ballot propositions, to assist with its campaign.

**Publications – February 1999 Focus** - The Issaquah School District publishes a quarterly newsletter called Focus. The February 1999 edition of Focus contained the headline **“Election set for April, Voters to decide: “Build or Multi-track”**. The February 1999 Focus newsletter was the primary publication used by the Issaquah School District to communicate information about the April, 1999 ballot measures. A total of 32,000 copies of the February 1999 Focus were printed. Of these, 29,213 were mailed. The distribution was similar to past issues. The cost for printing and labeling was \$6,429.12. The Focus is mailed to registered voters in the Issaquah School District, and the total postage cost for the February 1999 Focus was \$2,697.14. The district targeted registered voters and did not mail to all residents of the school district.

The district’s April 27, 1999 \$68.7 million capital construction bond proposal was billed as an “either/or” choice. While multi-tracking was not listed on the ballot, the community was being asked to choose between constructing new schools and multi-tracking. The district failed to insure that the information it produced was fair, balanced, and objective.

The district had conducted extensive research on year-round schools and multi-track options, and had learned of both the positive and negative aspects of multi-tracking as an alternative to construction of new schools. In spite of this information, the February 1999 Focus, and two publications that immediately preceded the February 1999 Focus, concentrated on the negative aspects of multi-tracking and ignored its positive aspects. At the same time, the district used the February 1999 Focus to describe what the capital construction bond would provide. Readers were left with a clear choice, “Build or Multi-track”. The district also sent a clear message that new construction was the superior option, and that multi-tracking would have a major negative impact on the district and the community. The district made it clear that if the April 27, 1999 bond failed, the district would adopt multi-tracking. The February 1999 Focus, was sent only to



registered voters, and provided a one-sided negative view of the multi-tracking option. The district's effort was an attempt to support passage of its April 27, 1999 capital construction bond proposal.

The February 1999 Focus started out by saying **“April 27 has been set for an election to decide whether Issaquah will “Build or Multi-track” to deal with school district recent and future growth.”** Statements were made about multi-tracking starting on the first page, down the left hand margin and continuing on the right hand margin of the third page, under the heading **“Multi-Track: What would it mean?”** In addition to a few introductory statements about multi-tracking, the following statements were included.

“Multi track is untested in a high-achieving district like Issaquah.”

“No other district in the state has a multi-track schedule.”

“No district chooses multi-track as a way to improve learning.”

“Current focus on learning will be threatened by urgency of scheduling.”

“Teachers focus on instruction will be threatened by need to pack and unpack classroom supplies overnight.”

“Issaquah will be a school district island, surrounded by quality districts with quality schedules—during a national and state teacher shortage.”

“People value the quality of education in Issaquah schools and equate it to the quality of life and to their property values.”

The February 1999 Focus included an article about the need to replace seven principals, and stated that it would be difficult to recruit top principals in a setting that included multi-tracking as an option. The Focus also included an article by Superintendent Janet Barry with a strong endorsement for passing the capital construction bond. Superintendent Barry started her article by stating, **“The question is clear, and so is the cost. Should we build to serve our children – or should we “multi-track” children into four or five shifts, “time sharing” the space we**

**have?” She went on to say, “Multi-tracking’s greatest cost is in quality. Teachers and principals verify we’ll lose the ability to attract and keep top-quality teachers and principals. We’ll pay in lost teaching time, instructional teaming, communication, and family time. We’ll feel fragmentation of neighborhoods, community athletic programs, and lost community access to school facilities. The real costs are to families, community culture and educational quality. Voters will have to decide these dollar vs. quality issues.”**

In a section entitled “Four points to remember about the April election” the district used information from its surveys to bolster support for passage of the April 27, 1999 ballot propositions. The district included the following statement: “Survey results show that **confidence in the district is high.** More than half of the respondents feel that Issaquah’s **teachers, Superintendent and school board are doing a “good” or “excellent” job.** Results also point out that residents feel **Issaquah’s schools are a safe place** for their kids. Finally, over 90 percent of those polled believe that **teaching computer skills is an important part of education today.**” When discussing the cost of the capital construction bond, the district repeatedly emphasized that the tax rate to be paid by homeowners if the bond passed would be the same rate paid by homeowners in 1998.

Under a section in the February 1999 Focus entitled “**Technology is important because ...**” the district included the following statements that promoted passage of the technology levy:

- “Information is not limited to what can be learned or stored in school;”
- “Students are encouraged to dig deeper to explore topics in a variety of ways;”
- “Students are inspired to explore areas of interest and allowed to discover for themselves;”
- “It reinforces connections to the real world;”
- “It enriches and extends the curriculum.”

In a section of the February 1999 Focus entitled “**Tech Q & A**” the district included the following promotional statements:

- “According to the Washington State Technology Alliance, high-tech companies prefer to hire their skilled workers locally. That future skilled citizenry could be grown right here in Issaquah schools.”
- “Technology sparks interest. Students become less passive and dependent to “give” them information. Instead they become active under the guidance of a teacher who shows them ways to “discover” information and how to use it for deeper learning and understanding.”

**Other Publications** – A publication entitled “**Capital bond and Technology levy: The basics**” was produced by the district, as needed, prior to the publication of the February 1999 Focus. The exact cost and number of copies produced and distributed is unknown. The publication contained much of the same information that eventually was included in the February 1999 Focus. The district produced another publication entitled “**Multi – Track 101 How it might work in Issaquah.**” The exact cost and number of copies produced and distributed is likewise unknown as it was only printed, as needed, until the February Focus was printed. According to testimony, both documents were provided to individuals who requested information about the upcoming bond and levy, and to education and community groups such as the PTA. These two publications were not mailed out in the same manner as the Focus newsletter.

Each page of the “Multi-track 101” publication included, down the left margin of the page under the Issaquah School District logo, the phrase “Items to note:” and some of the following statements:

- MT scheduling will begin in 2001 if there is no classroom construction;
- High school students and K-8 students will be on different school calendars;
- It may not be possible for K-8 siblings to have the same schedule;

- No district in the state of Washington is on MT;
- No district chooses MT because of improved education.

The publication noted that capital fund dollars could be saved by not building more classrooms, and noted that elementary schools are at 115 percent of capacity. Statements were also included about increased air-conditioning costs. The publication also included information about program impacts, and impacts on families and the community. A page was devoted to impacts on the classroom. The publication talked about employee recruitment and retention, the quality of education in Issaquah, and the problems of “time shared” classrooms. A statement was included that said, **“In a recent survey, 82% of Issaquah teachers said passing the construction bond was a priority in avoiding MT.”** A page was devoted to a planning timeline if multi-tracking were to be adopted. The last two pages were devoted to the experiences of six school districts from around the United States that had tried multi-tracking. Most of the summaries talked about the problems of multi-tracking in those districts.

## **V.** **CONCLUSION**

Staff alleges, based on the facts specified in Section IV, that Janet Barry, Superintendent, Issaquah School District No. 411, violated RCW 42.17.130 by using or authorizing the use of the facilities of Issaquah School District to support passage of the district’s April 27, 1999 \$68.7 million capital construction bond and \$7.9 million technology levy. The respondent violated RCW 42.17.130 by using or authorizing the use of district facilities to produce and distribute information in the February 1999 Focus newsletter, as well as in the publications “Capital bond and Technology levy: The basics” and “Multi – Track 101” that supported passage of the district’s April 27, 1999 capital construction bond and technology levy.

The February 1999 Focus promoted passage of the April 27, 1999 ballot propositions because: (1) It was sent to registered voters rather than to all residents of Issaquah School District; (2) It contained promotional information and statements obtained from surveys and polls that attempted to market and sell the bond and levy; (3) It contained multiple examples of unbalanced, negative statements about the multi-tracking option and provided few positive statements in an effort to persuade voters to adopt the capital construction bond; and (4) It provided promotional statements about the benefits to the community if the capital construction bond and technology levy passed.

The February 1999 Focus contained a strongly worded persuasive article by Janet Barry, Superintendent of Schools, asking voters to pass the capital construction bond and technology levy. The Respondent hired KNCB/Dave, a public relations and media relations marketing and advertising firm, on December 1, 1998 to develop and implement a Strategic Communications Plan. The district's former Director of Communications, Denise Passinetti, provided services to the district as Vice President of Public Relations for KNCB/Dave. Ms. Passinetti worked on a Strategic Communications Plan, but also assisted the district's efforts to promote passage of its April 27, 1999 ballot propositions by helping develop the district's bond and levy publications. The survey of registered voters conducted by Evans McDonough Company in November, 1998 cost the district \$13,800. Information learned from the survey was used by the district to market the passage of its capital construction bond and technology levy.

The Respondent sent out 32,000 copies of the February 1999 Focus at a production cost of \$6,429.12 and a mailing cost of \$2,697.14. The District also distributed an unknown number of the documents "Multi – Track 101" and "Capital bond and Technology levy: The basics" prior to production and distribution of the February 1999 Focus.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of April, 2001.

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Philip E. Stutzman  
Director of Compliance